
(2008) 08 JH CK 0026

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6571 of 2007

Om Prakash Verma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2009) 57 BLJR 436 : (2009) 1 JCR 113

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Advocate : K.M. Verma and L.K. Singh, for the Appellant; S.B. Gadodia, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The petitioner, who is working as Section Officer in the Department of Home, Jharkhand, has filed this writ application wherein prayer has been made for issuance of a writ in the nature of mandamus restraining the respondent No. 3 from proceeding with the departmental proceeding till disposal of the Vigilance case No. 21 of 2000 instituted under Sections 7/13 of the Prevention of Corruption Act and further for quashing of the order as contained in memo No. 7267 dated 7.11.2007 (Annexure 6) issued by respondent No. 3 rejecting the request of the petitioner to stay the departmental proceeding until disposal of criminal case.

2. The fact of the case is that the petitioner while was posted in the State of Bihar, was allegedly caught red handed while accepting bribe money, for which Vigilance case No. 21 of 2000 was instituted under Sections 7/13 of the Prevention of Corruption Act. Consequently, the petitioner was put under suspension on 7.11.2000 and after bifurcation of the State, petitioner's service was transferred to the State of Jharkhand and thereupon petitioner joined on 9.1.2001. In course of time, petitioner's suspension was revoked on 29.4.2003. After lapse of 6 years, the respondents initiated a departmental proceeding

against the petitioner and memo of charge, which is almost same as that of allegation made in the first information report, was served on 9.7.2007.

3. According to the case of the petitioner, petitioner put an objection before the Inquiry Officer on 18.7.2007 relating to the continuance of the departmental proceeding as charges were the same as it were in the first information report. Upon it, Inquiry Officer sought instruction on that point from the Department of Personnel and Administrative Reforms. On getting opinion that the departmental proceeding as well as criminal case may proceed simultaneously, objection taken by the petitioner regarding continuance of the proceeding was rejected.

4. Being aggrieved with that order the petitioner has preferred this writ application.

5. Learned Counsel appearing for the petitioner submitted that it has been well settled law that if the charges of the departmental proceeding and also in criminal case are same and identical and the witnesses are also common, it is desirable that the departmental proceeding be stayed but the Inquiry Officer by rejecting the objection taken by the petitioner regarding continuance of the departmental proceeding acted illegally, unconstitutionally and contrary to the law laid down by the Hon''ble Supreme Court in a case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and also by this Court in a case of State of Bihar and Ors. v. Javed Shaukat 2002 (3) JLJR 299.

6. It was further submitted that criminal case was instituted in the year 2000 and for seven long years proceeding was not initiated and as such Inquiry Officer should have stayed the proceeding as the criminal case was in the stage of evidence but the enquiry officer in stead of staying the departmental proceeding virtually proceeded with ex parte and submitted inquiry report.

7. As against this, learned Counsel appearing for the State submitted that if the disposal of criminal case gets unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry as the interest of administration and good Governance demand that these proceedings are concluded expeditiously.

8. It was further submitted that interest of administration demand that undesirable elements are thrown out and the charge of misdemeanor is inquired into promptly as the disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad element and, therefore, it is not in the interest of administration that persons accused of serious misdemeanors should be continued in office indefinite i.e, for long periods awaiting the result of criminal proceedings. Learned Counsel in support of his submission has referred to a decision rendered in the case of State of Rajasthan Vs. B.K. Meena and others, .

9. It was further submitted that the departmental proceeding is quasi judicial proceeding based on preponderance of probabilities which does not affect judicial proceeding whereas criminal proceeding runs under the provisions/sections of

the Indian Penal Code and, therefore, there is no bar in proceeding with the departmental proceeding and also with the criminal trial simultaneously.

10. Having heard learned Counsel appearing for the parties it does appear that on one hand the petitioner by putting reliance in a case of Capt. M. Paulanthony v. Bharat Gold Mines Ltd. and Anr. (supra) would submit that if a departmental proceeding and the criminal case are based on identical and same set of facts, the departmental proceeding needs to be stayed whereas stand of the respondents is that there is no bar in proceeding with both the proceedings simultaneously. In that context, decision rendered in a case of Capt. M. Paulanthony v. Bharat Gold Mines Ltd. and Anr. (supra) needs to be examined somewhat in details and hence paragraph 22 of the decision is worth to be noticed as their Lordships have drawn conclusion after having due regard to several decisions rendered earlier on the related issues which need to be quoted hereinbelow:

22. The conclusions which are deducible from various decisions of this Court referred to above are :

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

Conclusion drawn by their Lordships, as indicated above, do indicate implicitly that as a matter of course departmental proceedings cannot be stayed during the pendency of the criminal trial. However, it has been held that where

departmental proceedings and criminal case are based on identical and similar set of fact and charge which is a grave in nature which involves complicated questions of law and fact, then it will be desirable to stay the departmental proceedings till conclusion of the criminal case. Therefore, it is quite clear that advisability, desirability or propriety, as the case may be, in regard to a departmental inquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This view has been expressed by the Hon''ble Supreme Court in a case of Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas, .

11. Here in the instant case, charges of accepting bribe money though is quite a grave offence but the fact on which criminal case was lodged and also departmental proceeding was initiated never seems to be complicated one nor any complicated question of law seems to have been involved. Under this situation, it is not desirable particularly keeping in view the gravity of the offence to stay departmental proceedings till conclusion of the trial. That apart, even if the charges are based on complicated question of law and fact departmental proceeding in terms of conclusion arrived at in sub paragraph (iv) of paragraph 22 of the decision rendered in a case of Capt. M. Paulanthony v. Bharat Gold Mines Ltd. and Anr. (supra), needs not to be stayed in a routine course, rather due consideration needs to be given to prompt conclusion of the departmental proceeding. Not only that their Lordships have further gone to say that if the disposal of criminal case gets unduly delayed, departmental proceedings even if were stayed on account of the pendency of the criminal case can be resumed and proceeded with so as to conclude them at an early date. On this count also it never appears to be desirable to stay criminal proceeding as according to the petitioner, vigilance case is still going on even after lapse of seven years and nothing has been placed giving any indication that the trial would be concluded at the earliest and, therefore, keeping in view the facts and circumstances as also seriousness of the charges as well as ratio laid down by the Hon''ble Supreme Court in a case of Capt. M. Paulanthony v. Bharat Gold Mines Ltd. and Anr. (supra), it would not be desirable to stay the departmental proceedings till conclusion of the criminal trial.

12. Under the circumstances, the order as contained in memo No. 7267 dated 7.11.2007 (Annexure 6) seems to have rightly been passed by the respondent No. 3 which needs no interference by this Court. Accordingly, I do not find any merit in this writ application.

Hence, this application is dismissed.